

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN BRUNO ADDING
CHAPTER 10.21 (SUSTAINABLE FOOD PACKAGING) TO TITLE 10 (MUNICIPAL
SERVICES) OF THE SAN BRUNO MUNICIPAL CODE**

Section 1. The City Council of San Bruno finds as follows:

1. There are more than 125 restaurants and food service businesses in San Bruno;
2. Many of these food vendors in the City use disposable food containers made from expanded polystyrene (EPS) and solid polystyrene as well as other non-recyclable and/or non-compostable materials;
3. Expanded polystyrene is not biodegradable and as a result persists in the environment indefinitely without breaking down;
4. Styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink and is a suspected carcinogen and neurotoxin which potentially threatens human health;
5. There is also evidence that styrene leaches into the soil, air, and water, and may leach into groundwater;
6. Due to the physical properties of polystyrene, the United States Environmental Protection Agency has stated, "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy";
7. Marine animals and birds confuse expanded polystyrene foam for a source of food and ingestion results in reduced appetite and nutrient absorption as well as possible death by starvation of birds and marine animals;
8. In the manufacturing process as well as the use and disposal of products, the energy consumption, greenhouse gas effect, and other environmental effects, polystyrene's environmental impacts are rated second highest, according to the California Integrated Waste Management Board;
9. Plastic and foamed polystyrene makes up a large unrecyclable component of the fast food waste stream and marine debris;
10. Currently, there is no economically or environmentally friendly means of disposal for a large percentage of take out food packaging and many of the materials used for take out food packaging are not recyclable or compostable in many systems;
11. The City has a duty to protect public health and the natural environment;
12. Affordable compostable and/or recyclable products and environmentally sound alternatives to polystyrene food service containers are becoming increasingly available for most food service applications;

13. An important goal of the City is to promote the use of sustainable products and establish an environmentally and financially responsible program of solid waste management;

14. The City Council believes the ability of a substance to biodegrade and the impact of a substance on the natural environment are meaningful criteria to use when developing public policy to reduce litter and blight and improve the management and disposal of solid waste;

15. It is the City Council's desire to reduce the amount of litter and pollution, manage the City's waste in a sustainable manner, protect local wildlife, and protect the city's aquifer, all of which increase the quality of life for San Bruno's residents and visitors; and

16. Counties and cities across California are considering taking the same or similar measures due to these public policy concerns.

NOW, THEREFORE, the City Council of the City of San Bruno Ordains as follows:

Section 2. Chapter 10.21 (Sustainable Food Packaging) of Title 10 (Municipal Services) is added as follows:

CHAPTER 10.21 SUSTAINABLE FOOD PACKAGING

10.21.010 Definitions.

a) "ASTM specification" means meeting the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended. D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate.

b) "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

c) "City facilities" means any building, structure or vehicle owned, leased, or operated by the City of San Bruno.

d) "Compostable" means all materials in the product or package will degrade into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware includes products made of plant materials and ASTM-Specification Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any customer or processor can easily distinguish the ASTM Specification compostable plastic from non-ASTM Specification compostable plastic. "

e) "Disposable food service ware" means single or non-durable use disposable products used by food vendors in the restaurant or food serving industry for serving or transporting prepared, ready-to-consume food or beverages. This includes, but is not limited to, plates, cups, bowls, utensils, cartons, trays, and hinged or lidded containers for takeout foods and/or leftovers from partially consumed meals prepared at food vendors and straws, cup lids, and utensils but does not include single-use disposable packaging for unprepared foods.

f) "Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

g) "Food vendor" means any establishment, located or providing food within the City of San Bruno, which provides prepared food for public consumption on or off its premises and

includes without limitation any sales outlet, store, shop, restaurant, grocery store, supermarket, vehicle or other places of business operating primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging, including both restaurants and retail food vendors.

h) "Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes referred to as "Styrofoam®," a Dow Chemical Co. trademarked form of expanded polystyrene (EPS), processed by any number of techniques including, but not limited to, fusion of polymer spheres, injection molding, foam molding, and extrusion-blow molding. The term "polystyrene" or "oriented polystyrene" also means clear or solid polystyrene that is generally used to make clear clamshell containers, clear or colored straws, lids and utensils and which may have the recycling symbol #6.

i) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food". This does not include any raw uncooked meat, fish or eggs unless provided for consumption without any further food preparation.

j) "Recyclable" means material that can be sorted, cleansed and reconstituted using San Bruno's available recycling collection programs for the purpose of using the altered form in the manufacture of a new products. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste. Recyclable plastics comprise those plastics with the recycling symbols #1 through #5 including polyethylene terephthalate (PET or PETE), high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP).

k) "Restaurant" means any establishment located within the city that sells prepared food for consumption on, near, or off its premises by customers. For the purposes of this chapter the term includes a restaurant operating from a temporary facility, cart, vehicle or mobile unit.

l) "Reusable" means all materials in the product or package will be used more than once in its same form by the customer, retail food vendor or other reuse programs. Reusable food service ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer provided take-out containers. Also includes durable containers, packages or trays used on-premises or returnable containers brought back to the food vendor.

10.21.020 Prohibited use of disposable food service ware; required biodegradable, compostable, reusable or recyclable food service ware.

a) Effective February 1, 2010, food vendors using disposable food service ware are prohibited from dispensing prepared food to customers in disposable food service ware made from polystyrene.

b) All food vendors using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware in conformance with the schedule set forth in 10.21.020(a). Food vendors may price products or services to customers in a manner that covers the cost differential.

c) All city departments and agencies shall not purchase or acquire disposable food service ware made from polystyrene for use at city facilities and purchase and acquire only biodegradable, compostable, reusable or recyclable food service ware.

d) After exhausting any existing stock as of the effective date of this ordinance, all city facilities, city managed concessions, and city sponsored events shall use biodegradable, compostable, reusable or recyclable food service ware and shall not use polystyrene unless it can be shown there is not an alternative for a specific application.

10.21.030 Exemptions.

a) Prepared foods prepared or packaged outside the city are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the city are encouraged to follow the provisions of this chapter.

b) A food vendor will be exempted from the requirements of this chapter for specific items or types of food service ware if the city manager or his/her designee finds that the requirements of this chapter would cause undue hardship. An "undue hardship" shall be found in:

- 1) Situations unique to the food vendor where a suitable, biodegradable, compostable, reusable or recyclable alternative does not exist for a specific application; and/or
- 2) Situations where no reasonably feasible available alternative exists to a specific and necessary container prohibited by this section.

c) Any food vendor may seek an exemption from the requirements of this chapter by filing a request in writing with the city manager. A written exemption request shall include all information necessary for the city manager to make a decision, including, but not limited to, documentation that factually supports the claimed exemption. The city manager may require the applicant to provide additional information to permit him or her to make a determination regarding the exemption application. The city manager or his/her designee may waive any specific requirement of this chapter for a period of not more than one year if the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. Exemption decisions are effective immediately and final and are not subject to appeal. A food vendor granted an exemption by the city must re-apply prior to the expiration of the one year exemption period and demonstrate continued undue hardship, the continued absence of a suitable biodegradable, compostable, reusable or recyclable alternative, if it wishes to have the exemption extended. Extensions may be granted for intervals not to exceed one year.

d) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.

10.21.040 Enforcement and notice of violations.

a) The city manager or his/her designee will have primary responsibility for enforcement of this chapter. The city manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, entering the premises of any food vendor to verify compliance. The city manager or his/her designee is authorized to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter.

b) Any person violating or failing to comply with any of the requirements of this chapter or of any regulation of administrative procedure authorized by it shall be guilty of an infraction and administrative citations shall be issued for violations in accordance with the following schedule:

- 1) For the first violation, the City Manager or designee, upon determination that a violation of this chapter has occurred, shall issue a written warning to the food provider that specifies the violations and the appropriate penalties in the event of future violations.
- 2) A fine not exceeding one hundred dollars for the first violation of this chapter following the issuance of a warning notice.
- 3) A fine not exceeding two hundred dollars for the second violation of this chapter within one year;
- 4) A fine not exceeding \$500 for the third and any subsequent violation of this chapter within one year;

- 5) Fines are cumulative and each day that violation occurs shall constitute a separate violation.
- c) Administrative citations and any appeals therefrom shall be issues in the manner set forth in Chapter 5.08.010 through 110 inclusive of the San Bruno Municipal Code.
- d) The remedies and penalties provided in this section are cumulative and not exclusive of one another. The city may seek any legal, injunctive, or other equitable relief to enforce this chapter and any regulation or administrative procedure authorized by it.

Section 3. This Ordinance has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq., hereafter the "CEQA Guidelines"). The City has determined that this Ordinance is not a "project" for purposes of CEQA, as that term is defined in CEQA Guidelines Section 15378. Because it is not a "project," this Ordinance is not subject to CEQA's requirements. Further, even if this Ordinance is deemed a "project" and therefore subject to CEQA, the Ordinance is exempt for the following reasons: (1) under CEQA Guidelines Section 15061(b)(3), it is not a project which has the potential for causing a significant effect on the environment; and (2) under CEQA Guidelines Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration enhancement, or protection of the environment.

Section 4. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of San Bruno hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. This Ordinance shall take effect and be in force 30 days after its adoption.

Section 6. The City Clerk shall publish this Ordinance according to law.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney

---o0o---

I hereby certify that the foregoing Ordinance No. _____ was introduced on _____, 2008, and adopted at a regular

meeting of the San Bruno City Council on _____,
2008, by the following vote:

AYES: COUNCILMEMBERS:_____

NOES: COUNCILMEMBERS:_____

ABSENT: COUNCILMEMBERS:_____

City Clerk